UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman DWAYNE C. DENNIS
United States Air Force

ACM 36132

24 February 2006

Sentence adjudged 15 October 2004 by GCM convened at Pope Air Force Base, North Carolina. Military Judge: Ronald A. Gregory (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 18 months, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Andrew S. Williams, and Captain Kimberly A. Quedensley.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain Jefferson E. McBride.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

Consistent with his pleas, the appellant was convicted of six specifications alleging violations of Article 112a, UCMJ, 10 U.S.C. § 912a. The sole assigned error is whether the appellant's plea to the additional charge and its specification, alleging wrongful use of marijuana, is improvident because the record does not adequately resolve whether the appellant knowingly used the drug.

In the course of the *Care*[1] inquiry, the appellant explained he was very intoxicated on the occasion when he must have used marijuana. His plea of guilty was based largely

[1] *See United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969)

on his recollection that marijuana was present at a family reunion he attended, and his subsequent urine specimen that tested positive for marijuana.

At one point during the inquiry, the military judge concluded he could not accept the appellant's guilty plea to the marijuana specification because of concerns about whether the appellant could admit to knowing use of the drug. After an out-of-court session with counsel under Rule for Courts-Martial 802, in which counsel for both parties suggested to the judge he might have confused the appellant by the nature of some of his questions, the *Care* inquiry resumed. The appellant admitted he knew he used marijuana, even though he was intoxicated at the time.

An accused who is personally convinced of his guilt may plead guilty, even if he is unable to recall the facts relating to the offense. *United States v. Moglia*, 3 M.J. 216, 218 (C.M.A. 1977); *United States v. Corralez*, 61 M.J. 737, 741 (A.F. Ct. Crim. App. 2005). Our superior court stated in *Moglia* that "personal awareness is not a prerequisite for a plea of guilty, but, rather, an inquiry must be made to ascertain if an accused is convinced of his own guilt. Such a conviction . . . may be predicated on an accused's assessment of the Government's evidence against him." *Moglia*, 3 M.J. at 218 (internal citations omitted).

It is apparent to us there was some confusion during the inquiry about the distinction between knowingly using a contraband substance and failing to later remember the use. However, the military judge thoroughly covered the issue of knowledge and the appellant's explanation established a factual basis for his plea. We find his plea provident.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court